

Annex 1: UR's response to NIE comments on licences

Condition	Participate in Transmission Licence	Electricity Distribution Licence	UR view
Definitions	<p>NIE had previously suggested that a definition of “develop” and “maintain” be added to our licence. Similarly, SONI had proposed a definition of “plan” be added to its licence. The intention being to make it clear what activities each entity is licensed to undertake. However, the UR has not accepted these proposals and instead considers it better to define the activities through revisions to the TIA.</p> <p>NIE is broadly content with the UR's proposal, since the important outcome is that both NIE's and SONI's activities are clearly defined – and this can be achieved either through adding definitions in the licences, or through revisions to the TIA.</p> <p>However, NIE would point out that the process of amending the licence is more onerous than the process of amending the TIA. Therefore the dividing line between NIE's and SONI's activities may be more securely 'hard wired' for the purposes of IME3 compliance if these terms are defined in the licences.</p>	<p>We note the definition of “Distribution Business” in this licence does not match the definition in the Transmission Licence.</p> <p>These need to be consistent, and we would request that this Licence adopt the definition set out in the Transmission Licence so that the “Distribution Business” comprises both NIE and the Relevant Subsidiary.</p>	<p>Prior to consultation, NIE was informed by the UR that the definitions of ‘develop’ and ‘maintain’ would be included in the Transmission Interface Agreement (TIA) rather than in the licences. The TIA is referenced in NIE's licence.</p> <p>The UR's position is that terms such as ‘plan’, ‘develop’ and ‘maintain’ cannot be easily and readily defined. There is not precise or legal demarcation as to which activities fall within these terms. There is therefore necessarily some overlap in any particular case or set of circumstances. It is not therefore appropriate to attempt to define them in licences. This is particularly the case given that (a) the terms develop and maintain are used without definition in the Electricity Order, and (b) there is overlap between the terms plan (as proposed by SONI for its licence), develop and maintain.</p> <p>The UR does not therefore propose to define these terms in the licence. It will be for the TIA to provide the demarcation and division of responsibilities between NIE and SONI and to set out the parameters of each parties responsibilities which the UR will be able to opine on through the approval process.</p> <p>NIE and SONI established a project team to work on the TIA and the companies provided a modified TIA to the UR in mid-January 2014.</p> <p>The UR issued a consultation on the proposed TIA modifications in January 2014 for a 4-week period</p>

			given the significant nature of changes to working arrangements between NIE and SONI. The Utility Regulator has approved the suggested modifications and a decision paper was published here: http://www.uregni.gov.uk/news/ur_publishes_final_tia_modifications
2 – Preparation of Accounts	NIE is content with these amendments.	NIE is content with these amendments.	n/a
3A – Director Contracts of Employment	<p>We suggest the insertion of the word ‘material’ at LC3A(3)(b). This would allow for a former employee of ESB to take up employment with NIE whilst still retaining their beneficial interest in the ESB employee share ownership trust (ESOT).</p> <p>NIE also suggests that LC3A(3)(b) be amended to provide an express exclusion for the Relevant Subsidiary. The intent of this request is to recognise that NIE and NIE Powerteam are in practice the same business (as accepted in the definition of Transmission Owner Business) and that therefore the terms and conditions of a director or executive officer of NIE or NIE Powerteam could be linked to the other. There is also an additional bracket on line 4 of LC 3A(3)(b) that should be deleted. LC3A(3)(b) should thus read (with suggested additions in bold):</p> <p><i>(b) the terms and conditions pursuant to which any person is appointed and/or employed as a director or executive officer of the Licensee (or, as the case may be, the Relevant Subsidiary) do not confer any material benefit, right or entitlement for that person which is ((whether directly, indirectly, expressly, or impliedly) linked to, dependant on, or arises from any current, past or future appointment or employment with any affiliate, other than the Relevant Subsidiary, or related undertaking of the Licensee (or, as the case may be, of the Relevant Subsidiary, other than the Licensee).</i></p> <p>With regards to the requirement that all ‘executive officers’ are directly employed by NIE, the definition of ‘executive officer’, as proposed by the UR, is such that it could be interpreted to apply to almost any management role in NIE. We do not believe this was the intent as stated in the SEMC’s preliminary decision on TSO certification. By way of example, paragraph 89 of the SEMC’s preliminary decision states:</p> <p><i>“The SEM Committee is of the view that these arrangements provide alternative</i></p>	<p>NIE suggested that the word ‘material’ is inserted at Condition 3A(3)(b). It is the UR’s view that the use of the word ‘material’ as suggested by NIE would make it more difficult to determine (and therefore enforce the obligation as would need to determine) what was meant by material in each case. The UR is therefore minded not to insert the word ‘material’ as proposed by NIE.</p> <p>NIE also suggested that Condition 3A(3)(b) be amended to provide an express exclusion for the Relevant Subsidiary since it is their view that NIE and NIE Powerteam Ltd are the same business. The UR is of the view that previous employment with NIE Powerteam Ltd (and vice versa) may not be a concern given that NIE Powerteam Ltd is now a subsidiary of NIE. The UR is therefore content to amend the condition as suggested by NIE.</p> <p>NIE also suggests edits to delete the term ‘executive duties’ and instead refer to persons on the Executive Committee. The UR does not think this is workable as there is no requirement for NIE to have such a Committee. The UR will however refine the drafting of “executive duties” in order to clarify that the restrictions do not apply to every person carrying out a management role.</p>	

	<p><i>assurance of the independence of the management and staff of NIE and of the decisions which they may take that is comparable to that which would be provided by the provisions of Chapter V of the Directive provided that a number of measures are taken which clarify and copper fasten the independence provided into the future. In order to clarify that the duty of NIE Directors and senior staff is solely to NIE all Directors and senior Executives shall be directly employed by NIE.”</i> (Emphasis added.)</p> <p>It is clear from the quotation above that the SEMC’s restriction should be limited to the senior executives of NIE and we propose alternative drafting which seeks to provide clarity on this.</p> <p>Specifically NIE would propose an amended definition of ‘executive officer’ as set out below. This would also allow for the deletion of the term ‘executive duties’.</p> <p><i>“Executive Officer” includes (i) any person holding the position of Managing Director, Deputy Managing Director and Director of Regulation, Finance Director, Human Resources Director, Asset Management Director, Construction Director, Operations Director (or any equivalent of these positions), and (ii) any person not already captured in (i) who is a member of the Executive Committee.</i></p> <p><i>“Executive Committee” means the committee of senior executives of the Licensee to whom the Licensee’s board of directors delegates day-to-day management responsibility for the Licensee and the Relevant Subsidiary.</i></p> <p>As a final point, NIE would question whether the UR has the vires to make the proposed amendments to LC3A in NIE’s Distribution Licence.</p>		<p>NIE’s final query is whether the UR has vires to make the same amendments in the distribution licence. The UR’s response is that if these amendments are being made in NIE’s transmission licence then the UR considers it requisite to make them in the distribution licence for the purpose of the Directive and Regulation 91(1)(b) provides the vires.</p>
6 – Health and Safety	NIE is content with these amendments.	n/a	n/a
7 – Payment of Fees	NIE is broadly content with these amendments. However, we understand that the UR’s methodology for determining the licence fee does not currently allow for fees to be levied against an electricity distribution licence holder. This might not be relevant whilst NIE is the only such	Please note that LC7(2)(d)(ii)(A) has not been amended in this licence in line with the Transmission Licence. Otherwise see comments for the Transmission Licence.	The UR was already aware of the need to modify this condition and the drafting of the licences has been checked and aligned.

	licence holder, but in the event of another licence grant, it would need to be resolved.		
8 – Provision of Information to the Authority	NIE believes that the amendments proposed to LC8 should be consistent with the amendments proposed to LC7, where the UR in that condition limited its functions to those "relating to electricity". Therefore, in LC8, after "any functions" NIE believes that it is correct in the context of the IME3 requirements for there to be the insertion of the wording "relating to electricity".	Please see comments for the Transmission Licence.	As noted in Chapter 3 of the Decision Paper, the UR is minded to use NIE's suggested wording.
9 – Disposal of Relevant Assets and Indebtedness	First, please note that Annex 2A of the formal consultation document (i.e. the marked-up version of the Transmission Licence posted on the UR's website) differs from the clean version of the Word document of the Transmission Licence provided by the UR to NIE on 11 Sept 2013. In the final sentence of LC9(6)(a), the Word document contains an insertion of the following text: "... (or, as the case may be, the Relevant Subsidiary)...", whereas the formal consultation document does not include this text. NIE assumes the Word document, which is also consistent with the drafting provided in the formal consultation document for the Electricity Distribution Licence (i.e. Annex 2B), reflects the UR's proposed amendments and requests that this point is corrected in the final documentation. Secondly, NIE would also like to record formally that it still believes it is correct in the context of the IME3 changes that	Please see comments for the Transmission Licence.	The UR has noted that Annex 2A which accompanied the consultation document contained an error. The updated NIE transmission licence (see Annex 3 to this paper) contains the correct wording for Condition 9(6)(a). As regards NIE's second point that it still believes that in the context of the IME3 changes, NIE and NIE Powerteam Ltd are one business, it is the UR's view that the changes proposed are required but do not prevent relevant/appropriate transactions which are made for the purposes of the transmission owner business (i.e. the one business to which NIE refers).

	NIE and Powerteam should not have restrictions between them in relation to paragraph 6, as they are regarded under the licence as one business, and so should be able to create, undertake and enter into such arrangements between themselves.		
9A – Gearing	NIE would like to again record formally that it remains of the view that NIE and Powerteam should be considered as one business and that therefore an exclusion from the restrictions imposed in LC9A(7) ought to have been included for certain transactions between NIE and Powerteam.	Please see comments for the Transmission Licence.	During engagement with NIE prior to publication of the consultation document, NIE had suggested that an exclusion be provided to recognise that NIE and Powerteam are considered one business (in accordance with the definition of Transmission Owner Business) and that therefore the restrictions in place in relation to indebtedness should not be applicable to dealings between NIE and Powerteam. It is the UR's view that while it may be the case that NIE and NIE Powerteam Ltd are considered as one business they are nevertheless separate legal entities.
10 – Restriction on Use of Information	NIE is content with these amendments.	NIE is content with these amendments.	n/a
12 – Independence	In relation to the definition of “appropriate time”, NIE considers that any deviation from the period of 6 months should be as otherwise specified in the Compliance Plan, instead of as otherwise specified by the Authority. NIE's suggested definition might read as follows: “... [appropriate time]... means 6 months or such other period as the Authority may specify as specified in the Compliance Plan in respect of any person or class of persons.”	Please see comments for the Transmission Licence.	The UR is not minded to agree to NIE's suggested wording as it considers it more relevant for it to be able to specify the relevant period in any individual case/class of case rather than for the compliance plan to do so.
13 – Prohibited	NIE is content with these amendments.	NIE is content with these amendments.	n/a

Activities			
14 – Ring Fencing	NIE is content with these amendments.	NIE is content with these amendments.	n/a
15 – Non – Discrimination	NIE is content with these amendments.	NIE is content with these amendments.	n/a
16 – SEM T&S Code	<p>In relation to LC16(2), the UR has proposed that NIE must procure that Powerteam comply with the T&S Code, in so far as applicable to the activities carried out by the Transmission Owner Business. NIE believes that this wording does not legally work as Powerteam is not a party to the T&S Code. Instead, NIE would propose that the obligation should be that NIE procure that Powerteam not do any act or omit to do any act that would prevent NIE from complying with the T&S Code.</p> <p>The suggested drafting would be, “For the purposes of paragraph 1 the Licensee’s obligation to comply with the Single Electricity Market Trading and Settlement Code is an obligation to comply with (and procure that the Relevant Subsidiary not do any act or omit to do any act that would prevent the Licensee from complying with) the provisions of the Code in so far as they are applicable to activities carried out by the Transmission Owner Business”.</p> <p>The clause reference in LC16(3) to “paragraph 1b” is incorrect and should refer to “paragraph 2”.</p>	<p>NIE believes that LC16(3) of the Transmission Licence, which provides for the UR to issue directions relieving NIE from complying with certain aspects of the T&S Code, should also be set out in the Distribution Licence.</p>	<p>The UR has amended the clause reference in Condition 16(3) to ‘paragraph 1b’ to instead refer to ‘paragraph 2’.</p> <p>The UR is also minded to agree with the NIE’s suggestion that it shall procure that Powerteam does not do anything (whether by act or omission) to prevent NIE’s compliance with the TSC.</p>
17 – TIA	Please note that Annex 2A of the formal	n/a	The UR has noted that Annex 2A which accompanied

<p>consultation document (i.e. the marked-up version of the Transmission Licence posted on the UR's website) differs from the clean version of the Word document of the Transmission Licence provided by the UR to NIE on 11 Sept 2013. In the Word document LC17(3)(b)(v)(A) reads as: "the transmission system is to be developed and maintained (by the Licensee) and <u>planned</u> and operated (by the Transmission System Operator);". The underlined text is not however included in the consultation document, which is not correct. NIE assumes the Word document reflects the UR's proposed amendments and requests that this point is corrected in the final documentation.</p> <p>At LC17(3)(b)(v)(B), "The" should not be capitalised.</p> <p>At LC17(3)(b)(x), NIE would propose removing the first four words "the service levels and".</p> <p>The UR has proposed that it have the right under a new LC17(10) at any time to direct revisions to the TIA following consultation with NIE and SONI. NIE does not believe this is appropriate for a number of reasons.</p> <p>First, this proposal cannot be said to be required for the implementation of IME3 and therefore the UR does not have the vires to make this amendment.</p> <p>Secondly, there is a clear and well understood process already in the TIA (Section P – Governance), which sets out a mechanism to be followed in relation to proposals for amendments to the TIA, which then require the UR's</p>		<p>the consultation document contained an error. The updated NIE transmission licence (see Annex 3 to this paper) contains the correct wording for Condition 17(3)(b)(v)(A).</p> <p>The UR has also amended Condition 17(3)(b)(v)(B) as suggested by NIE.</p> <p>The UR has not accepted NIE's proposal that 'the service levels and' could be deleted.</p> <p>NIE has stated that it does not believe it is appropriate for the UR to have the right to direct revisions to the TIA following consultation with NIE and SONI. The UR's position is that it needs to be able to direct amendments to the TIA in the event that neither of the parties propose amendments which are required. If this provision was not included it is the case that the UR would not be in a position to act independently of the licensees as it could only approve amendments or determine disputes where one party does agree with an amendment proposed by the other. However, given that the UR is making the amendments for the purposes of IME3, the licence condition will be amended to provide that the UR's powers to direct modifications to the TIA applies where such modifications are required for the purposes of the IME3.</p>
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	<p>approval. That process includes within it a process to be applied where there is not agreement on any amendments, which allows the UR then to approve the appropriate change.</p> <p>NIE believes that the current arrangements and licence provisions for TIA amendments work well and do not need to change.</p> <p>Under the Distribution Code licence provisions, NIE is required to consult electricity undertakings in relation to the periodic review of the Distribution Code and provide to the UR: (a) a report on the outcome of the review; (b) any proposed revisions to the Distribution Code; and (c) any representations or objections from electricity undertakings. The UR can only approve or not approve the proposed changes, unless there are outstanding representations or objections. If there are outstanding representations or objections, the UR may consult authorised electricity undertakings and then, and only then, issue directions requiring NIE to revise the Distribution Code.</p> <p>The way that the TIA amendment mechanism works already gives the UR an additional ability (similar to that for the Distribution Code) to deal with non-agreed amendments, and so not even a Transmission licence change to parallel the Distribution Code licence provisions is needed. Indeed the licence change proposed goes considerably wider, giving an almost unfettered right to the UR to amend the TIA, which is not required by the IME3 changes and which</p>		
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	would also fundamentally and incorrectly alter the regulatory compact between a UK regulator and a licensee.		
18 – Obligations to provide Transmission Services	NIE is content with these amendments.	n/a	n/a
19 – Developing and Maintaining the Transmission System	<p>NIE would suggest the deletion of the reference to “the Transmission System Security and Planning Standards” at LC19(1)(a). Without this deletion, it could be implied from this condition that NIE would retain a responsibility for planning. NIE considers that the correct approach is that SONI should, in discharging its planning responsibility, have regard to the requirements of the Transmission System Security and Planning Standards, as is stated in the proposed update to the SONI Licence. Having regard to those requirements, SONI should then define to NIE the transmission development that it requires to be carried out to ensure compliance with the standards. NIE should then be able to develop in accordance with that definition, without the need to refer back to the standards themselves.</p> <p>In practice these arrangements will be set out in the revised arrangements under the TIA.</p>	n/a	<p>NIE does not believe that the revised Condition 19(1)(a) reflects the new arrangements whereby NIE is no longer responsible for the Transmission System Security and Planning Standards. NIE has therefore asked that Condition 19(1)(a) should be revised to delete the reference to ‘Transmission System Security and Planning Standards’ and that Condition 19(1)(b) should be deleted in its entirety.</p> <p>In the UR’s view, NIE’s obligation is to develop and maintain in accordance with the provisions of the document of that name (there is no suggestion that NIE is responsible for planning). The fact that the document has the word ‘planning’ in its title does not imply that NIE is responsible for the planning. However, both NIE and SONI have agreed that Condition 19 (1)(a) of NIE’s licence should read as follows;</p> <p>1 The Licensee shall develop and maintain the transmission system in accordance with:</p> <p>(a) the Transmission System Security and Planning Standards and the Transmission Interface Arrangements; and</p>

			The UR will amend the licence accordingly.
20 – Obligations re Offers from the TSO	NIE is content with these amendments.	n/a	n/a
24 – TSO Certification	NIE is content with these amendments.	n/a	n/a
26 – Grid Code	NIE is content with these amendments.	n/a	n/a
34, 36, 38 – in Distribution licence only	n/a	NIE is content with these amendments.	n/a